

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>3/20/2020</u>
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MICHAEL MADER, and all others similarly  
situated,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,  
LLC,

Defendants.

19-CV-3787-LGS-DCF

**PLAINTIFF MICHAEL MADER's MEMORANDUM OF LAW IN SUPPORT OF HIS  
MOTION TO FILE DOCUMENT UNDER SEAL**

Plaintiff Michael Mader respectfully moves this Court, pursuant to Rule 1(D) of this Court's Individual Rules for Practice in Civil Cases, for an order granting approval to file under seal certain documents submitted in connection with Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

Specifically, Plaintiff seeks approval to file the following three Exhibits under seal ("Confidential Documents"):

- Exhibit 3 to the Declaration of Adam Shaw in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment, which is a true and correct copy of Navient's policy for determining whether a private student loan is dischargeable in bankruptcy.

- Exhibit 4 to the Declaration of Adam Shaw in Support of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment, which is a true and correct copy of the sworn deposition testimony of Patricia Peterson.
- Exhibit 16 to the Declaration of Adam Shaw in Support of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment, which is a true and correct copy of NAV-MADER01-000237, a document reflecting how Navient reported Plaintiff’s account to Experian.

The Confidential Documents all relate to confidential business information produced by non-party, Navient Solutions, LLC in response to a subpoena from Plaintiff regarding Navient’s internal policies relating to credit reporting on private student loans. As a result, they should be treated as confidential materials and filed under seal.

### **ARGUMENT**

While there is a presumption of public access to judicial documents, Courts have repeatedly recognized a number of exceptions that work to protect the kind of confidential business information contained in the Confidential Documents. *See Lugosch v. Pyramin Co. of Onondaga*, [435 F.3d 110,119-20](#) (2d Cir. 2006). In resolving sealing applications, courts consider both “the weight of the presumption” of access and whether there are “countervailing facts,” such as “the private interest of those resisting disclosure.” *Id.* at 120. According to Federal Rule 26(c)(1)(G), a court may issue an order “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specific way.” Fed. R. Civ. P 26(c)(1)(G).

In this case, non-party Navient produced three documents in response to a subpoena from Plaintiff. *See Shaw Decl.*, Exs. 3-4. Each of these documents was designated “confidential” by

Navient because they contain confidential information concerning Navient's business practices regarding credit reporting on private student loans to non-Title IV schools. Accordingly, Plaintiff believes that these Exhibits should be filed under seal.

Dated: March 19, 2020  
Albany, New York

Respectfully Submitted,

/s/ Adam R. Shaw  
Adam R. Shaw  
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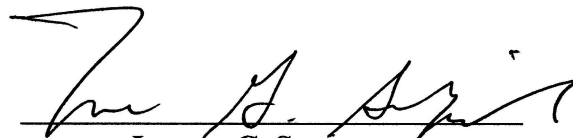
*Attorney for Plaintiff Michael Mader*

After reviewing the relevant materials, and for substantially the reasons stated in this motion, Plaintiff's to file Exhibits 3, 4 and 16 under seal is granted.

Only Michael Mader, Adam Reese Shaw, Austin Connell Smith, Experian Information Solutions, Inc. and Kerianne Tobitsch shall have access to these materials.

SO ORDERED.

Dated: March 20, 2020  
New York, New York

  
**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**

**CERTIFICATE OF SERVICE**

I, Adam R. Shaw, hereby certify that on March 19, 2020, I caused the foregoing to be filed electronically with the Clerk of the Court using the CM/ECF System. I further certify that the above document was served on all parties by the Court's CM/ECF system.

/s/ Adam R. Shaw  
Adam R. Shaw